

ICC Air Services Corporation and Hartman Mechanical, Inc. and United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local Union #111. Cases 12-CA-14545, 12-CA-14564, 12-CA-14618(1-2), 12-CA-14647, 12-CA-14684, 12-CA-14697, and 12-AC-31

February 21, 1995

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS COHEN
AND TRUESDALE

On August 19, 1992, Administrative Law Judge Donald R. Holley issued the attached decision. The General Counsel and the Respondent filed exceptions and supporting briefs, the Respondent filed an answering brief, and the General Counsel filed a reply brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,¹ and conclusions and to adopt the recommended Order as modified.

We adopt the judge's finding that Hartman Mechanical, Inc. (HMI) was a *Golden State* successor to ICC Air Services Corporation (ICC). *Golden State Bottling Co. v. NLRB*, 414 U.S. 168 (1973). We also adopt the judge's finding that there was a business relationship between ICC and HMI. However, we note that the record shows even more indicia of this relationship than those specifically mentioned by the judge. For example, Roy Hartman, as owner and president of HMI, maintained telephone and mail contact with the owners of ICC, as he assisted them in closing ICC; HMI took over five jobs formerly handled by ICC; HMI acquired some operating capital from ICC's retainages (percentage of contract amount retained by owner until job completed and accepted by owner); and HMI acquired construction and office equipment from ICC (forklifts, drill motors, drill presses, saws, computer systems, typewriters, calculators, desks, mechanical drawing system). Unlike *Glebe Electric, Inc.*, 307 NLRB 883 (1992), this case reveals a predecessor and successor with business relationships.

We also adopt the judge's findings that HMI violated Section 8(a)(3) and (1) of the Act in the manner

he stated.² In this regard, we note that the judge failed to cite *Wright Line*³ in finding that HMI violated Section 8(a)(3) and (1) of the Act by discharging employees Mike Mailhot and Tom Grey. However, the judge's analysis is fully consistent with the principles set forth in that case.⁴

Finally, we do not agree with the judge's finding that the complaint allegations against ICC cannot be addressed because the General Counsel failed to serve ICC at its last known address with copies of the two complaints which issued in this proceeding.⁵ We note that HMI was served with the complaints. Both ICC and HMI were "named in the complaint" as Respondents.⁶ The complaints alleged ICC's unfair labor practices, and they alleged that HMI had a successor's obligation to remedy them. Moreover, at trial, HMI was given a full opportunity to defend against the allegations concerning ICC's conduct and the allegations concerning successorship. Furthermore, HMI availed itself of this opportunity and defended itself against these allegations. Accordingly, holding HMI liable for ICC's unfair labor practices would comport with the statute and with the requirements of due process. In this regard it is clear that HMI had both actual notice and knowledge of ICC's alleged unfair labor practices. Moreover, the judge found and we agree that HMI is a *Golden State* successor to ICC.

Where, as here, the requirements of the Act and the policies of *Golden State* warrant an order against the successor for any unfair labor practices committed by the predecessor, we would not deny relief simply because the predecessor was not served with the complaint. This is particularly so here because the predecessor did not exist at the time of the complaints. To deny relief in these circumstances is "to project legalism to an unwarranted length."⁷ Accordingly, HMI is liable for any unfair labor practices committed by ICC and an order may issue requiring successor HMI to remedy any unfair labor practices found to have been committed by its predecessor ICC. In light of the above, we shall remand this proceeding to the judge to prepare a supplemental decision containing specific

² We note that the judge inadvertently omitted from his Order the appropriate requirements that the Respondent cease discharging employees because they support the Union and make whole those employees whose pay was docked because they participated in a Board election. We correct these omissions.

³ 251 NLRB 1083 (1980), enf'd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982).

⁴ We note that the judge concluded that the complaint did not allege, and thus no finding could be made, that Respondent HMI as a successor employer was obliged to recognize and bargain with the Union. No exceptions were filed to this finding.

⁵ ICC was not served because it did not exist at the time of the complaints. It had been legally dissolved.

⁶ See Sec. 10(c) of the Act.

⁷ *Peterson Construction Co.*, 106 NLRB 850, 851 (1953).

¹ The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enf'd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

findings of fact and credibility resolutions regarding ICC's alleged unlawful conduct.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, Hartman Mechanical, Inc., Largo, Florida, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

1. Insert the following as paragraph 1(a) and reletter the subsequent paragraphs.

“(a) Discharging employees because they support the union.”

2. Insert the following as paragraph 2(a) and reletter the subsequent paragraphs.

“(a) Make whole with interest, as specified in the remedy, Tom Grey, Mike Mailhot, Butch Gardill, Mark Hutchinson, and Kent Nelson for the hour of pay they were docked because they participated in a Board election.”

3. Substitute the attached notice for that of the administrative law judge.

IT IS FURTHER ORDERED that the portion of this proceeding relating to allegations of unlawful conduct by ICC, specifically the complaint allegations of interrogation and threats in violation of Section 8(a)(1) of the Act, and the allegations that employees Harold Hilton, Otto McNesby, and Gerry Johnson were terminated in violation of Section 8(a)(3) and (1) of the Act, is remanded to Chief Administrative Law Judge David S. Davidson for, among other things, credibility findings, without reopening the hearing. The judge shall prepare and serve on the parties a supplemental decision containing findings of fact, conclusions of law, and a recommended Order in light of the Board's remand. Following service of the supplemental decision on the parties, the provisions of Section 102.46 of the Board's Rules and Regulations shall apply.

APPENDIX

NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT threaten employees with discharge if they wear clothing with a union logo while working.

WE WILL NOT threaten to discharge employees who are discovered to be organizing for the Union.

WE WILL NOT discharge employees because they support the Union.

WE WILL NOT threaten employees with loss of pay for time spent participating in Board elections.

WE WILL NOT threaten employees with more onerous working conditions because they support a union.

WE WILL NOT dock the pay of employees for time spent participating in a Board election.

WE WILL NOT discourage membership in United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local Union #111, or any other labor organization, by discharging employees because they engage in union activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them in Section 7 of the Act.

WE WILL make whole with interest Tom Grey, Mike Mailhot, Butch Gardill, Mark Hutchinson, and Kent Nelson for the hour of pay they were docked because they participated in a Board election.

WE WILL offer Tom Grey and Mike Mailhot immediate and full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed and WE WILL make them whole for any loss of earnings and other benefits resulting from their discharges, less any net interim earnings, plus interest.

WE WILL remove from our files all reference to the discharges of Tom Grey and Mike Mailhot, and notify each in writing that this has been done and that the unlawful action will not be used against them in any way.

HARTMAN MECHANICAL, INC.

Michael R. Maiman, Esq., for the General Counsel.

Larry B. Roberts, Esq., of Largo, Florida, for the Respondent.

Gary L. Meredith, Field Representative, of Pinellas Park, Florida, for the Charging Party.

DECISION

STATEMENT OF THE CASE

DONALD R. HOLLEY, Administrative Law Judge. On charges filed by the Union in Case 12-CA-14545 on June 24, 1991¹ (amended on July 22 and December 20), Case 12-CA-14564 on July 10, Case 12-CA-14618-1 on August 14 (amended on September 17 and December 20), Case 12-CA-14618-2 on August 14 (amended December 20), Case 12-CA-14647 on September 3, Case 12-CA-14684 on September 18, and Case 12-CA-14697 on September 25, the Regional Director for Region 12 of the National Labor Relations Board issued a complaint on November 6 which consolidated the named cases for trial and alleged in sum: that ICC Air Services Corporation (ICC)² and Hartman Mechani-

¹ All dates are 1991 unless otherwise indicated.

² Name of ICC as amended at hearing.

cal, Inc. (Hartman) are a single employer and/or alter egos and they violated Section 8(a)(1), (3), and (5) of the National Labor Relations Act by engaging in certain specified conduct. Shortly thereafter on November 22, the Regional Director issued an amended complaint which realleged the matter set forth in the November 6 complaint, added an allegation that Hartman was the successor of ICC, and added an allegation that Respondents violated Section 8(a)(5) of the Act by refusing since September 13 to furnish the Union with requested information. Respondent Hartman filed timely answer denying that it is a single employer and/or alter ego or successor, denying that it is engaged in commerce as alleged in the complaint, and denying that it engaged in the unfair labor practices set forth in the complaint.

On August 9, an election was held pursuant to a petition filed in Case 12-RC-7436 which named ICC as the employer. The Union won the election by a vote of five to one, with one undeterminative challenge. Thereafter, on September 9, the Union filed a petition in Case 12-AC-31 seeking to amend the certification of representative issued on August 20 in Case 12-RC-7436 to change the Employer's name from ICC Air Services Corporation to Hartman Mechanical, Inc. By Order dated December 6, Case 12-AC-31 was consolidated with the unfair labor practice cases for hearing, ruling, and decision.

The trial in the above cases was held in Tampa, Florida, during the period January 6-9, 1992. The parties who appeared were afforded full opportunity to participate.³ On the entire record, including consideration of the briefs filed by the parties, and from my observation of the demeanor of the witnesses who appeared to give testimony, I make the following

FINDINGS OF FACT

I. JURISDICTION

In footnote 3 of the Decision and Direction of Election issued in Case 12-RC-7436 on July 10, 1991, the Regional Director found as follows:

ICC Air Services Corporation is a Florida corporation engaged in the construction industry as a mechanical contractor on construction project job sites. In the past 12 months, a representative period, the Employer, in the course and conduct of its business operations in Florida, provided mechanical services valued in excess of \$50,000 for customers located outside the State of Florida.

In agreement with the Regional Director, who made the above findings of facts stipulated by ICC's counsel, I find that ICC is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. See General Counsel's Exhibits 2 and 3.

Jurisdiction over Hartman is not in dispute as counsel stipulated that it meets the Board's indirect inflow standard for the assertion of jurisdiction.

³ Respondent ICC did not enter an appearance.

II. STATUS OF LABOR ORGANIZATION

Union Field Representative Gary Meredith testified that Local Union #111, United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada admits employees into membership and it exists, in part, for the purpose of representing employees in collective bargaining. On those facts, I find that the Union is a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. Facts

ICC, a Florida corporation, was formed on March 1, 1990. From June 14, 1990, until the end of July 1991, it maintained its principal office and shop at 13160 56th Court, Clearwater, Florida.

At times material, the corporate stock of ICC has been held as follows: Irwin Gross—40 percent; Al Resnick—25 percent; Andy Shapiro—25 percent; and Michael Sheison—10 percent. Robert Yoho, the original incorporator, testified that ICC's first president was William Hall. He indicated that Roy Hartman has been employed by the corporation since it was formed; first as a vice president and, since January 1991, as its president.

During its existence, ICC functioned as a mechanical contractor specializing in air-conditioning and heating. An organizational chart placed in the record as Respondent's Exhibit 10 reveals that during 1991: Gross, Resnick, and Shapiro were directors; Roy Hartman was president; Gene Sciuille was vice president, engineering; Jack Newgent and Ralph Lazarus were project managers; Doug Lasater was the shop superintendent; Chuck Eads was the estimator; and Susan Hartman was the secretary.

In early 1991, ICC began to experience financial difficulties. Hartman testified that at some point the stockholders, all residents of Pennsylvania or New Jersey, found it necessary to invest about \$140,000 additional moneys in the corporation. At one point, Hartman indicated some 30 suppliers had instituted legal actions against the corporation.

On May 29, 1991, the Union filed its petition in Case 12-RC-7436. A hearing was held on the petition on June 14, and the Regional Director issued his Decision and Direction of Election on July 10. While the Union had sought a statewide bargaining unit, the unit found to be appropriate was:

All full time and regular part-time construction employees including pipefitters, pipefitter/welders, laborers, duct mechanics, duct helpers, backhoe operators, and fitter/backhoe operations employed by the Employer at the Laurel Middle School project site location in Sarasota, Florida; but excluding Field Foreman/Job Site Supervisors, office personnel, clerical employees, guards and supervisors as defined in the Act.

The Decision and Direction of Election indicated the time and place of the election would be announced at a later date.

Hartman testified that, when he received a copy of the petition, he contacted ICC's stockholders and had several conference calls with them. He claims the stockholders concluded that as they did not have an extra 20 to 30 percent in their jobs for union benefits, they would not willingly go

union. He indicated the corporation hired Attorney James Cusack with the Fowler-White firm in Tampa to represent them.

As indicated above, it was determined in the representation case that a group of construction workers employed by ICC on a Laurel Middle School project constituted an appropriate bargaining unit. The record reveals that Hartman, acting on behalf of ICC, executed a subcontract with W. G. Mills, Inc. on January 4, 1991, that provided, in essence, that ICC would complete all heating, ventilating, and air-conditioning at the Laurel Middle School for \$1,827,700. ICC commenced work on the contract about May 1, 1991. By June 1991, ICC had some 14 or 15 craftsmen working at the site. Jack Newgent was the project manager at the site and Robert Shampine was the general foreman. Both individuals were admittedly supervisors within the meaning of the Act. It is uncontradicted that Shampine provided daily supervision at the site and that he had and exercised the authority to hire, fire, lay off, and discipline employees.

Employee Thomas Grey, a pipefitter hired by ICC in May 1991 at the Laurel Middle School project, testified that on or about June 5, when Hartman was causing him to complete an I-9 form, they had a union-related conversation. The employee indicated that Hartman asked him where he was from and he replied Connecticut. Asked what he did there, he stated he had his own business. He claimed Hartman asked if he was union, and he answered no. Hartman acknowledged during his testimony that when having Grey execute a form I-9, that Grey told him he had been in business up north. He testified he asked him if it was a union or a nonunion shop, but he did not recall what Grey's reply was. Hartman denied he interrogated Grey about his personal preference.⁴

Shampine, who testified as a General Counsel witness at the hearing, indicated that his project manager, Newgent, who was in charge of the Laurel Middle School project as well as other ICC projects, informed him a petition for an election had been filed. Shampine added, and Newgent denied, that the project manager told him they had to find out who the problem children were and get rid of them to get the job back on line and bring it back into budget.⁵ According to Shampine, on June 13 or 14, Newgent informed him he had talked to Roy Hartman again and they had to do something about the union problem because there was no money in the budget for it. He claims he was told to do what he needed to do. Shampine testified that after talking to Newgent, he went to the picnic table where the ICC crew was gathered for their morning break and he told them: "I said I'd fire the first mother fucker I found out to be a union organizer, and if there's a problem with that, stand up and let me know about it." When he received no response, Shampine testified he said, "Well obviously nobody here is. Go on back to work."⁶

⁴I credit Hartman's version of the conversation.

⁵Newgent claimed during his testimony that he never talked to Shampine about learning who the union people were and he did not direct him to take any action against union adherents. Shampine was an impressive witness and his testimony fits in with that given by employee witnesses. I credit him when his testimony conflicts with that given by Newgent.

⁶Employees Grey, Michael Mailhot, and Harold Hilton attributed substantially the same remarks to Shampine although Mailhot and

On Friday, June 28, Shampine laid off employees Harold Hilton and Otto McNesby. Hilton testified he was simply handed his check and was told that was it. McNesby testified he was told there was a work force reduction and his services were no longer needed. Shampine testified he knew that Hilton and McNesby were members of the Union and he had discussed the Union with them. He indicated that he had discussed the need to reduce the work complement with Newgent and had informed his superior that he could kill two birds with one stone by laying off Hilton and McNesby because he believed they were union organizers and, by laying them off, he could cut manpower and get rid of some of the problem children.⁷

Hartman testified that in early July, he hired Mary Willis, an accountant, to analyze ICC's financial records. When she completed the task, she testified she prepared a profit and loss statement which revealed ICC was about \$907,000 "in the hole." She credibly testified she advised Hartman that ICC should go out of business unless the stockholders wanted to invest more than the \$515,000 they had already invested in the business. Hartman testified he reported Willis' conclusions and recommendation to the stockholders and after conferring with them and ICC's attorney, the majority stockholder, Gross, instructed him to shut down the business at the close of the day on Friday, July 19.

On July 14, Shampine laid off employee Gerald (Jerry) Johnson. Shampine testified he laid the employee off because of a need to reduce the work force more. He testified he had talked to Johnson and had learned he was a union member up north and he selected him for layoff because of that.

Hartman testified that to close the ICC operation, he commenced to notify the 200-300 people involved. As of July 19, he indicated that ICC had 13 jobs underway in Florida. He testified that apart from hand tools, most of the equipment on the jobs was rented or leased, and he notified the lessors that ICC was out of business. He indicated he notified Carr-Rubin Associates, the lessor of the Clearwater office and shop that ICC, which was already behind in the rent, was out of business and he was instructed to remove anything he intended to remove from the premises before the end of the month. Hartman, as well as his daughter-in-law, who was then ICC's secretary, testified that, pursuant to stockholder instructions, ICC's financial records were packaged and mailed to Gross in Philadelphia, Pennsylvania.

On the Monday following Friday, July 19, those individuals previously employed by ICC on the Laurel Middle School jobsite, including General Foreman Shampine, reported for work at the site as temporary employees of the general contractor, Mills.

On July 29, Hartman filed the Articles of Incorporation for Hartman Mechanical, Inc. Roy Hartman is its sole director, officer, and stockholder. ICC had 13 jobs throughout Florida when it ceased to function on July 19 and Hartman bid a

Hilton recalled a different derogatory term was used to describe organizers.

⁷Newgent testified Shampine had reported to him earlier that McNesby, a backhoe operator, had been responsible for breaking some pipe which caused ICC to uncover a ditch, effectuate a repair, and backfill the ditch a second time. Shampine testified he had not fired McNesby on the earlier occasion as it was concluded that even if McNesby damaged the pipe, it appeared he was unaware he had done so.

number of those jobs and was awarded subcontracts to complete 5 jobs. They were: the Laurel Middle School in Sarasota; two (2) Publex jobs in Winter Park and Sarasota; a Florida Power job in Seven Springs; and the Sun Free Elementary in Medburn. While the record fails to reveal what happened to small tools left by ICC on all its abandoned jobsites, it does reveal that the ladders, scaffolds, and similar items left on the Laurel Middle School and the Heather Lakes Elementary School jobsites were obtained and used by Respondent Hartman. Most of the heavy equipment on the Laurel Middle School jobsite had been leased by ICC. Hartman leased that equipment when he began operations.

The record reveals that effective August 1, 1991, Hartman commenced business at 13259 93rd Street North, Largo, Florida. The owner of the premises, Clayton Johnson, testified that his arrangement with Hartman was one wherein Hartman was to pay him \$1000 per month for the use of his building and equipment, and he was to receive \$800 per week salary for working for Hartman. In event Hartman decided to purchase Johnson's business and equipment for \$48,000, the \$1000 per month was to be applied to the purchase price.

Clayton Johnson testified he assisted Hartman and others when they removed ICC's possessions from the Clearwater shop. Items which were moved included: forklifts, drill motors, drill press, saws, computer systems, typewriter, calculator desks, office desks,⁸ a computer drafting system, credenzas, folding tables, chairs, air compressor, an 8-foot hand break, an electric 4-foot shear, a 24-inch cleat bender, an automatic glue system, a pinning system, and a steel rack which contained some steel. The items were moved from Clearwater to Largo in a truck which Hartman claimed he owned.⁹

The record fails to reveal with any specificity the relationship which existed between Hartman and the stockholders of ICC subsequent to July 19, 1991. Clayton Johnson indicated during his testimony that Roy Hartman told him he was able to obtain the funds to go into business by arranging with general contractors to collect retainage moneys that ICC would have received had it completed its contracts. In the same vein, Kathy Seichko, who was hired as a bookkeeper by Hartman on August 5, 1991, testified that she retyped ICC invoices to bill under Hartman moneys owed by Old England Development Company, Lap Construction, Keen Construction, and another firm whose name she could not recall. Seichko testified that during her tenure of employment which extended from August 5 to November 11, 1991, ICC stockholder Gross called Hartman four to five times, Shapiro called several times, and Hartman also talked to Resnick and agreed on one occasion to meet him in Orlando. Seichko testified that she was of the belief that Hartman paid debts ICC had incurred with Florida Contract Rental, Carrier Corporation, and others. To establish that it was justified in confiscating the shop equipment ICC left behind when it abandoned it at the Clearwater shop, Respondent Hartman placed in evidence as Respondent's Exhibit 23, a letter Roy Hart-

man sent to ICC's major stockholders. In sum, the letter asserts that ICC owed Hartman some \$7750 for a bounced check and it indicated he had moved a CAD system, an air compressor, and a cutoff saw with an aggregate value of \$6500 to his shop. In addition, Hartman testified ICC went out of business owing him vacation pay, 1 week of salary, and owing a company he owned \$13,000.

On August 9, the Regional Office of the NLRB conducted an election at the Laurel Middle School. Shampine testified that when he contacted Hartman to inform him an election was being conducted, Hartman told him he wanted the names of all people voting; he wanted to know who was paying for "this union bullshit" because he wasn't and wanted employees docked for the time they spent voting; that he was to tell the employees overtime was cut out immediately, there would be no more coffee breaks, if they came in a minute late they would be docked one-half hour, and that he was through being "Mr. Nice Guy" and "we were going to start playing hard ball." Hartman's bookkeeper, Seichko, indicated that during the period of her employment (August 5 to November 11), Roy Hartman stated at different times: "we've got to get this union out of here," "I can't stand these union men"; "I'm going to go down there and fire them."

The Union won the election with a vote of five to one, with one undeterminative challenged vote. After the election was over, Shampine testified he got the men together and told them: they were starting to play hard ball now; there would be no more breaks, there would be no more overtime; they were going to start tightening up the ship and were going to have a new disciplinary system; they were going to be docked for the time they spent voting; and, if they were a minute late or left for lunch a minute early, they would be docked. Shampine testified that, prior to the election, there had been breaks, overtime had been worked regularly, there had been no formal disciplinary policy, and employees had not been docked for being a minute late or leaving the job a minute early. He further indicated that all employees except Bob Leskie, who was hired after the eligibility cutoff date, and Tom Hines were docked either a half-hour or an hour. With respect to Hines, He testified Hines was known to be the employee who voted no and he and Roy Hartman agreed that to dock him for doing something for the Company would be asinine.

On the Monday that followed the August 9 election, Hartman visited the Laurel Middle School jobsite and spoke with the employees while they ate their lunch. Shampine and employees Tom Grey and Michael Mailhot were asked by General Counsel to describe Hartman's comments. Their collective testimony reveals that Hartman told the employees the NLRB election was invalid and there would be no union; that he asked what could be done to get the job going and Grey asked for insurance and more money and was told they could discuss it later; that some inquiry was made about reinstating overtime, and Hartman said there was no money in the budget for it; and that Hartman stated that employees were not to wear union shirts on the job again or they would be fired.¹⁰

⁸ A purple desk moved to Largo was owned by Yoho, the original incorporator of ICC. Hartman testified, without contradiction, that he took the desk because Yoho owed him money.

⁹ Ralph Wood Jr., who was permitted to complete ICC's work at a Heather Lakes Elementary School, testified that some tools left by ICC on the Heather jobsite were given to Hartman.

¹⁰ Employees Mailhot, Grey, and Mark Hutchinson were wearing T-shirts with "Union Yes" on the front during the meeting. Hart-

Continued

ICC was administratively dissolved by the Secretary of State, State of Florida, effective August 12, 1991 (R. Exh. 1).

Shampine testified that about a week after the August 9 election was held, Hartman visited the Laurel Middle School jobsite and, while they were walking by a ditch where employees Mailhot, Grey, Butch Gardill, and Ken Nelson were working, Hartman pointed to the four employees and said they were the problem children and they were dragging the job out and costing him too much money; that they had to get rid of those pricks as soon as they could. He indicated Hartman said the one in the middle (Ken Nelson) was the organizer.

On August 20, 1991, the Union was certified as the exclusive representative of the employees in the bargaining unit described in the Decision and Direction of Election which was issued in Case 12-RC-7436.

On August 28, Roy Hartman arrived unannounced at the Laurel Middle School jobsite at around 6:30 a.m. By 7 a.m., three (3) men employed by Respondent Hartman had arrived. Shampine arrived around 7:15 a.m. with the key to the trailer. By 7:30 a.m., all but four (4) employees had arrived. They were: Tom Hines, the sheet metal foreman; Mark Hutchinson; Tom Grey; and Mike Mailhot. Shampine testified Hartman instructed him to fire the employees for being late when and if they showed up, especially the two fitters (Grey and Mailhot). Hines and Hutchinson reported for work between 7:45 and 8 a.m. Shampine terminated them for being late. They spoke with Hartman and he agreed to rehire them. He testified he demoted Hines from sheet metal foreman to ordinary employee, and that he decided to rehire Hutchinson because the man told him he was late because his wife had gone into false labor and he considered that to be a good excuse. What happened thereafter is in dispute. Hartman testified he remained at the jobsite until around 1 p.m. and that Grey and Mailhot had not called in or showed up by that time. He claims he left, instructing Shampine to fire them for being late if they showed up or called in. Shampine testified that at about 8:30 or 9 a.m., Hartman told him that he was leaving; to fire the other two when they got there. Grey testified that he had an appointment to take some paperwork involving a plumber's license to the county on August 28 and he tried to call the trailer at about 6:45 a.m. to say that he would be late. He claimed the phone just rang and rang. He claimed he arrived at the job around 9 a.m., went to the trailer, saw the phone in pieces, and started to get his tools to start to work. He indicated Shampine told him at that time that he was fired for being late. Grey claimed he had never been disciplined for being late prior to that time. Shampine corroborated his testimony. Mailhot testified his car would not start on August 28 and he tried calling the jobsite trailer and got no answer. He claims he finally got hold of Shampine around 9:30 or 10 a.m. and Shampine told him he, Grey, and Mark Hutchinson were fired for coming in late. He claimed he had never been late before. He claims Shampine replied Hartman had been on the job that day and it was his decision to fire them. He testified he

man and Respondent witness employee Robert Leskie denied that any threats were made during the meeting. I credit General Counsel's witnesses, and indicate that I do not credit any of Leskie's testimony which was not corroborated by others.

asked Shampine if it had anything to do with the fact that the three of them had worn the shirts, and he claims Shampine replied, "more than likely it did." Shampine indicated during his testimony that the phone in the trailer had been out for 2 days at the time the described incidents occurred. He claimed Mailhot reached him on his beeper, rather than on the trailer phone. Hartman claimed he used the trailer phone on two occasions while he was at the jobsite on August 28. Shampine and the employees were the more believable witnesses, and I credit their testimony.

By letter dated August 26, 1991, the Union notified Respondent Hartman it had been certified as the representative of its employees and a bargaining date was requested. As noted, *supra*, the Union filed its petition in Case 12-AC-31 on September 9, 1991. The following day, September 10, 1991, the Union sent Respondent Hartman the following letter:

Pursuant to your obligation to bargain collectively, please make the following information available for inspection and if necessary, photocopying:

1. The Employers (ICC Air Services, Corp.) financial records from 3/5/90 to 8/12/91.

(a) information concerning the ownership, corporate structure, personnel and business of ICC Air Services Corp.

(b) records of incorporation.

(c) records of dissolving of corporation.

(d) identity of all officers.

(e) identify the shareholders of the corporation and the percentage of ownership interest of each shareholder.

(f) types of equipment and tools the company owns, leases or subcontracts.

(g) types of equipment and tools the company sold, leased or subcontracted to Hartman Mechanical, Inc.

(h) locations of all present, future or anticipated jobsites within the next year.

(i) names of any and all employees who are performing services encompassed in the certified unit work.

(j) dates of hire, termination, current wages, hours of employment and any benefits for these employees.

(k) disclosure of bargaining unit employees address, telephone numbers, social security numbers, job classifications or description of work being performed by each employee, and identify the jobsite where employee is performing certified unit work.

(l) list of all subcontract arrangements in effect or anticipated within the next twelve months.

(m) a description or details of the financial arrangements between ICC Air Services, Corp. and W. G. Mills or in lieu thereof copies of the subcontract agreement.

(n) identify any and all name or names, arrangements with employment agencies who provide manpower which performs bargaining unit work with ICC Air Services Corp.

(o) identify or describe the financial costs of such employment agency arrangement or in lieu thereof a copy of the arrangement or employment agreement.

2. The Employers (Hartman Mechanical, Inc.) financial records from 7/29/91 to present:

(a) information concerning the ownership, corporate structure, personnel and business, of Hartman Mechanical, Inc.

(b) records of incorporation.

(c) identify all officers.

(d) identify the shareholders of the corporation and the percentage of ownership interest of each shareholder.

(e) types of equipment and tools the company purchased, leased or subcontracts.

(f) types of equipment and tools the company purchased, leased or subcontracted from ICC Air Services Corp.

(g) locations of all present, future, or anticipated jobsites within the next 12 months.

(h) names of any and all employees who are performing services encompassed in the certified unit work.

(i) dates of hire, terminations, current wages, hours of employment and any benefits for these employees.

(j) disclosure of bargaining unit employees addresses, telephone numbers, social security numbers, job classifications or description of work being performed by each employee, and identify the jobsite where employee is performing certified unit work.

(k) list of all subcontract arrangements in effect or anticipated within the next twelve months.

(l) a description or details of the financial arrangements between Hartman Mechanical, Inc. and W. G. Mills or in lieu thereof copies of the subcontract agreement.

(m) identify any and all name or names, arrangements with employment agencies who provide manpower which perform bargaining unit work with Hartman Mechanical, Inc.

(n) identify or describe the financial costs of such employment agency arrangement or in lieu thereof a copy of the arrangement or employment agreement.

This information is imperative to answer any and all questions as to the successor or alter-ego situation of ICC Air Services, Corp. and Hartman Mechanical, Inc. It will also help to form a basis of where negotiations can start in reference to wages, benefits, terms of employment and hours of work.

Please contact me to schedule inspection of these documents.

Sincerely,

/s/ Dennis J. Jones

Business Manager Local Union #111

Respondent Hartman has not responded to the Union's letters requesting bargaining and information.

B. Issues

1. Whether ICC and Hartman constitute a single employer and/or Hartman is ICC's alter ego.

2. Whether Hartman is a *Golden State* successor.

3. Whether Respondents committed the unfair labor practices alleged in the complaint.

C. Analysis and Conclusions

1. The ICC-Hartman relationship

The complaint alleges that Respondent ICC and Respondent Hartman constitute a single employer and/or that the latter entity is the alter ego of Respondent ICC. In the alternative, it alleges that Respondent Hartman, as a successor of Respondent ICC, is responsible for remedying unfair labor practices committed before ICC went out of business.

In deciding the single-employer issues, the Board traditionally relies on four criteria: They are: (1) interrelation of operations; (2) common management; (3) centralized control of labor relations; and (4) common ownership. None of these factors, alone, is controlling, nor need all of them be present. *Radio Union v. Broadcast Service*, 380 U.S. 255, 256 (1965); *Blumenfeld Theatres Circuit*, 240 NLRB 206, 215 (1979), *enfd.* 626 F.2d 865 (9th Cir. 1980).

When considering alter ego status, the Board traditionally will consider the following factors: whether the two entities have substantially identical ownership, business purpose, management, supervision, operation, equipment, customers, and whether there exists an unlawful motive to avoid the labor law obligations of one of the entities involved. *Advance Electric*, 268 NLRB 1001 (1984); *Image Convention Services*, 288 NLRB 1036, 1039 (1988).

The record in the instant case reveals to my satisfaction that ICC abandoned its contractual commitments in the State of Florida and ceased to do business on July 19, 1991. This fact, standing alone, mitigates against a conclusion that ICC and Hartman constituted a single employer at the time the hearing was held. Thus, there is no significant functional interrelation of the entities as one no longer exists. Continuing, the record reveals that no common ownership exists as Hartman is owned by Roy Hartman, while ICC was owned by four individuals who reside in either Pennsylvania or New Jersey. With respect to control of labor relations, Hartman's uncontradicted testimony reveals that the stockholders of ICC decided they did not want to operate under union conditions, while he, acting alone, determines the labor policies to be followed by Hartman. While the record establishes that Roy Hartman and Field Superintendent Shampine accomplished management functions for both entities, that fact alone will not support a conclusion that ICC and Hartman constitute a single employer. In sum, I find that General Counsel has failed to establish that ICC and Hartman constitute a single employer.

I similarly find that General Counsel's alter ego contention is without merit. Thus, in *Superior Export Packing Co.*, 284 NLRB 1169, 1170 (1987),¹¹ the Board stated:

[W]e find that the lack of substantially identical common ownership precludes a finding that Meadowland was an alter ego of Superior. Although common ownership is not a prerequisite for an alter ego finding, the Board has found such a relationship absent common ownership only where both companies were either wholly owned by members of the same family or nearly

¹¹ See also *Perma Coatings, Inc.*, 293 NLRB 803, 804 (1989).

totally owned by the same individual or where the older company continued to maintain substantial control over the business claimed to have been sold to the new company.

As noted, *supra*, there is a lack of substantially identical ownership of the entities involved in the instant case. Moreover, the record clearly reveals that Respondent ICC became defunct in late July 1991 and it fails to indicate that the owners of Respondent ICC exerted any control over the operations of Respondent Hartman since the later entity was formed. Finally, while General Counsel contends that Roy Hartman created Respondent Hartman to avoid dealing with the Union, I credit Roy Hartman's claim that he created Respondent Hartman because he was unemployed when ICC went out of business, he was licensed as a mechanical contractor, and he was in a position to bid on the work which ICC was abandoning.

In the absence of direct evidence which would establish that Roy Hartman created Respondent Hartman to avoid dealing with the Union, I am not inclined to infer that he was motivated by a desire to avoid dealing with the Union merely because the new entity was created at a time the Union was seeking to obtain an NLRB supervised election among the employees working on the Laurel Middle School jobsite. If Roy Hartman created Respondent Hartman to avoid dealing with the Union, I seriously doubt that Respondent Hartman would have hired all the former ICC employees at the Laurel Middle School jobsite.

Remaining is General Counsel's contention that Respondent Hartman is a *Golden State*¹² successor which is liable to remedy its predecessor's 8(a)(1) and (3) violations. In *Golden State*, the Supreme Court adopted the Board's decision in *Perma Vinyl Corp.*, 164 NLRB 968 (1967), *enfd. sub nom. United States Pipe & Foundry Co. v. NLRB*, 398 F.2d 544 (5th Cir. 1968), holding that:

one who acquires and operates a business of an employer found guilty of unfair labor practices in basically unchanged form under circumstances which charge him with notice of unfair labor practice charges against his predecessor should be held responsible for remedying his predecessor's unlawful conduct.

The Board's traditional test for successorship status, affirmed by the Supreme Court in *NLRB v. Burns Security Services*, 406 U.S. 272 (1972), is whether there is substantial continuity in the employing enterprise. In determining whether there is substantial continuity, the Board has considered several factors including continuity in employees, supervisors, employee skills and functions, business location, and equipment and types of product lines.

Applying the above listed factors to the instant case, I conclude General Counsel has established that Respondent Hartman is the legal successor to Respondent ICC. There can be no doubt that Respondent Hartman is to be charged with knowledge of the unfair labor practices because the original and amended charges in Case 12-CA-14545 and the original charge in Case 12-CA-14564 were filed and were noted by Roy Hartman prior to the time that Respondent Hartman was

formed. Moreover, the record reveals that Roy Hartman, as well as his subordinates Newgent and Shampine, participated in the commission of the unfair labor practices complained of in the above indicated charges.¹³ With respect to employee continuity, while the record reveals there has been a diminution in the size and scope of the operations of the new Employer, the changes are not deemed to be such as to significantly affect the attitudes of employees employed on the Laurel Middle School jobsite.¹⁴ Thus, the record reveals that all ICC employees and supervisors employed at that location when ICC became defunct were employed without a significant hiatus by Respondent Hartman. They performed the same work, using the same tools and equipment, and received the same pay they had received when employed by ICC.

In sum, the employees hired by Respondent Hartman at the Laurel Middle School jobsite were not exposed to substantial changes which could be expected to alter their expectations and needs thereby changing their sentiment with respect to representation.

Respondent Hartman contends it cannot be held to be a successor to Respondent ICC because the record reveals it did not purchase ICC or its assets. I find the contention to be without merit as the record clearly reveals that Respondent Hartman confiscated the shop equipment abandoned by ICC at its Clearwater, Florida shop, and the small tools and equipment abandoned by ICC at the Laurel Middle School and the Heather Lakes Elementary School. The record further reveals that Roy Hartman notified the stockholders of ICC that he had converted abandoned equipment to his own use because they owned him moneys which they had not repaid. Such facts, in my view, supply the business relationship between the predecessor and successor entities which was missing in *Glebe Electric*, 307 NLRB 883 (1992).

For the reasons stated, I find that Respondent Hartman is a *Golden State* successor to Respondent ICC, and it is thus jointly and severally liable for remedying any unfair labor practices committed by Respondent ICC.

2. The unfair labor practices

While I have found, *supra*, that Respondent Hartman can be categorized as a *Golden State* successor, my inspection of General Counsel's Exhibit 1 reveals that Respondent ICC was never served with a copy of either of the complaints that issued in the instant case. Moreover, I note that Respondent ICC did not enter an appearance at the hearing held here. Having concluded that Respondent Hartman and Respondent ICC do not constitute a single employer, and that Respondent Hartman is not the alter ego of Respondent ICC, I further conclude that in the circumstances described, I cannot consider the complaint allegations which allege that Respondent ICC engaged in the commission of unfair labor practices.

¹³ The charge and amended charge in Case 12-CA-14545 allege unlawful interrogation and unlawful threats. The charge in Case 12-CA-14564 alleges that employees Hilton and McNesby were terminated in violation of Sec. 8(a)(3).

¹⁴ See *Zims Foodliner v. NLRB*, 495 F.2d 1131, 1141 (7th Cir. 1975); *NLRB v. Band-Age, Inc.*, 534 F.2d 1, 4, 6 (1st Cir. 1976).

¹² *Golden State Bottling Co. v. NLRB*, 414 U.S. 168 (1973).

a. *The 8(a)(1) violations*

(1) By Roy Hartman

Paragraphs 8(b), (c), and (d) of the complaint allege that on August 12, 1991, Roy Hartman told employees unionizing would be futile, that he threatened employees with discharge for their union activities; and that he solicited grievances with an implied promise to redress the grievances.

With respect to the “futile” comment, the testimony which I credit reveals that Roy Hartman merely told employees on August 12 that the NLRB election was invalid and there would be no union. I view the comment as an expression of Hartman’s belief that the August 9 election was invalid and there would be no union and as a statement of his belief that the August 9 election was not binding on Respondent Hartman. I find the comment was protected by Section 8(c) of the Act.

As indicated, *supra*, I have credited General Counsel’s witnesses’ claim that Roy Hartman stated on August 12 that employees were not to wear union shirts on the job again or they would be fired. By making the comment, I find that Respondent Hartman, through Roy Hartman’s conduct, violated Section 8(a)(1) of the Act as alleged.¹⁵

With respect to the solicitation of grievances allegation, I note the election was held on August 9, 1991, and the record fails to reveal objections were pending on August 12, 1991. In the circumstances of the instant case, I find General Counsel has failed to prove that Respondent Hartman’s solicitation of the grievances on August 12, 1991, violated the Act.

(2) By Robert Shampine

Paragraphs 9(b) and (c) of the complaint allege that on or about August 9, 1991, Shampine threatened to withhold one-half hour of pay from employees who voted in the NLRB election, and he threatened employees with more onerous working conditions because they supported the Union.

As indicated, *supra*, Shampine admitted during his testimony that he got the men together after the election and told them: they were starting to play hard ball now; there would be no more breaks; there would be no more overtime; they were going to tighten up the ship and were going to have a new disciplinary system; they were going to be docked for the time they spent voting; and if they were a minute late, or left for lunch a minute early, they would be docked. Shampine further admitted that all employees at the Laurel Middle School jobsite except Bob Leskie and Tom Hines were docked for the time they spent voting.

It is clear, and I find, that by engaging in the above-described conduct, Respondent Hartman, through the conduct of Robert Shampine, violated Section 8(a)(1) of the Act by threatening to dock the pay of employees for time spent voting in an NLRB election, and by threatening employees with more onerous working conditions because they supported the Union.

¹⁵ Hartman indicated during his testimony that Mills’ project superintendent had urged him to get his men to stop wearing T-shirts with a union logo on the job.

b. *The 8(a)(3) violations*

1. Paragraph 10(a) of the complaint alleges that by docking the pay of employees Tom Gray, Mike Mailhot, Butch Gardill, Mark Hutchinson, and Kent Nelson because they joined or supported the Union or engaged in protected concerted activities, Respondent Hartman violated Section 8(a)(3) of the Act.

As indicated, *supra*, Shampine admitted that he docked the pay of the five employees who voted yes in the election. While Shampine could not recall whether the employees were docked one-half hour or 1 hour, Mike Mailhot credibly testified he was docked 1 hour for participating in the NLRB election. I infer the remaining employees were also docked 1 hour. I find, as alleged, that by docking the pay of employees for time they spent voting in an NLRB election, Respondent Hartman violated Section 8(a)(1) and (3) of the Act as alleged.

2. Paragraph 10(c) of the complaint alleges that Respondent discharged employees Mike Mailhot and Tom Grey on August 28, 1991, because they joined or supported the Union or engaged in protected concerted activity.

Summarized, the record facts which relate to Grey and Mailhot are as follows: Respondent, through Shampine, voiced antiunion animus in mid-June by telling employees union organizers would be fired. Thereafter, the NLRB election was held on August 9, and Shampine testified that Tom Hines was known to be the employee that voted “no.” Consequently, Mailhot and Grey were then known to have voted “yes.” Thereafter, on August 12, Roy Hartman spoke with the employees on the Laurel Middle School jobsite during their lunchbreak. Mailhot, Grey, and Hutchinson were wearing T-shirts which had “Union Yes” on the front during the meeting. Roy Hartman threatened those employees by telling them if they appeared on the job wearing union T-shirts again, they would be fired. During the same time period, Roy Hartman was indicating his displeasure with the Union while he was in his office, and he stated in the presence of his bookkeeper, *inter alia*, that he was going to go to the job and fire union adherents. A short time later, Roy Hartman and Shampine walked the Laurel Middle School jobsite. When passing a ditch where Mailhot, Grey, Butch Gardill, and Ken Nelson were working, Hartman pointed to the four employees and said “they were the problem children . . . they had to get rid of those pricks as soon as they could.” At the time, Hartman identified Ken Nelson as the organizer. Roy Hartman visited the Laurel Middle School jobsite on August 28. Shampine’s credited testimony reveals he remained at the jobsite until 8:30 to 9 a.m. When four employees (Tom Hines, Mark Hutchinson, Mike Mailhot, and Tom Grey) had not reported for work by 7:30 a.m., Hartman instructed Shampine to fire them, particularly those two fitters (Grey and Mailhot), for being late when they arrived. Between 7:30 and 8:30 a.m., Hines and Hutchinson reported for work and were fired by Shampine. The employees spoke with Hartman and were rehired. Hines was demoted from sheet metal foreman to regular employee, and Hutchinson was rehired because he gave what Hartman considered to be a valid excuse for being tardy (wife in false labor). Grey sought to call the trailer at the Laurel Middle School jobsite before starting time on August 28 to report that he had license related business to conduct and would report for work later. The phone was out of order. He reported for work at

9 a.m. and was fired by Shampine pursuant to Hartman's instructions. Grey had never been disciplined for being late prior to that time. Mailhot's car would not start the morning of August 28, and he tried to call the trailer to indicate he was having car trouble, but the phone was out of order. He reached Shampine through the latter's beeper around 9:30 or 10 a.m., and Shampine informed him he was terminated. He, like Grey, testified he had never been disciplined before.

By establishing the facts set forth above, I find General Counsel made a prima facie showing sufficient to support the inference that Grey and Mailhot's participation in union activities was a motivating factor in Respondent's Hartman's decision to terminate their employment.

Respondent sought to justify the decision to discharge Grey and Mailhot through testimony given by Roy Hartman and Mills' superintendent on the Laurel Middle School job, Richard Kelley. Kelley testified that during the time Respondent ICC and/or Respondent Hartman employees were on the jobsite, he frequently observed employees still at the trailer as late as 7:20-7:30 a.m.,¹⁶ and he frequently observed their return from lunch at 1:15-1:30 p.m.¹⁷ He claimed that from July 19 to August 28, he probably called Roy Hartman six times—three times in 1 week—to tell him he had a lateness problem on the job. Roy Hartman testified he went to the Laurel Middle School job on August 28 because the general contractor's superintendent, Kelley, called him several times to tell him the men on the job were screwing him by never arriving on time, being late at lunch and taking big lunch hours, and leaving late. After arriving at the jobsite at about 6:30 a.m., Roy Hartman claimed he remained at the job until 1 p.m., and that Grey and Mailhot had not reported for work or called in by 1 p.m. He further claimed that he used the trailer phone to call his Largo office and learned the employees had not called in there. Roy Hartman testified that Grey and Mailhot's failure to report for work or call in left him no alternative but to dismiss them.¹⁸

In sum, the record reveals that after the election was held, employees were punished by having their wages docked for time they spent voting in the NLRB election, and by the imposition of more onerous working conditions. Within approximately 2 weeks of the time the election was held, Grey and Mailhot, two known union supporters who had been threatened with discharge a short time earlier by Roy Hartman, were fired when they reported for work late (Grey) or called in to report off (Mailhot), even though they had not been advised their jobs were in jeopardy because of their absenteeism records. Unlike employees Hines and Hutchinson, Respondent Hartman did not accept the excuses given by Grey and Mailhot for their absences. Even accepting Roy Hartman's above-described testimony at full face value, which I do not, I find that Respondent Hartman has failed to show that it would have terminated Grey and Mailhot on August 28 in the absence of their participation in union activities. Accordingly, I find, as alleged, that by terminating the employment of employees Tom Grey and Mike Mailhot

on August 28, 1991, Respondent Hartman violated Section 8(a)(1) and (3) of the Act.

c. The alleged 8(a)(5) violations and the AC petition

I have found, *supra*, that Respondent ICC and Hartman do not constitute a single employer and I have found that Respondent Hartman is not the alter ego of Respondent ICC. General Counsel's alternate theory was simply that Respondent Hartman is a *Golden State* successor which is obligated to remedy the 8(a)(1) and (3) violations committed by Respondent ICC. The complaint does not allege that Respondent Hartman, as a successor employer, is obligated to recognize and bargain with the Union. In the circumstances described, I recommend that the 8(a)(5) allegations in the complaint and the petition in Case 12-AC-31 be dismissed.

CONCLUSIONS OF LAW

1. Respondents ICC and Hartman are both employers engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. Respondent Hartman is the legal successor to Respondent ICC.

3. The Union is a labor organization within the meaning of Section 2(5) of the Act.

4. Respondent Hartman violated Section 8(a)(1) of the Act by threatening to fire employees for engaging in union activity, threatening employees with loss of pay for time spent voting in an NLRB-conducted election, and threatening employees with more onerous working conditions because they selected the Union to represent them in collective bargaining.

5. Respondent Hartman violated Section 8(a)(1) and (3) of the Act by discharging employees Tom Grey and Mike Mailhot because they engaged in union activity.

6. Respondents have not violated the Act except as expressly found herein.

REMEDY

Having found that Respondent Hartman has engaged in certain unfair labor practices, I find it must be ordered to cease and desist therefrom and to take certain affirmative action necessary to effectuate the policies of the Act.

Having found that Respondent Hartman discharged its employees Tom Grey and Mike Mailhot in violation of Section 8(a)(1) and (3) of the Act, I shall recommend that it be ordered to offer them immediate and full reinstatement to their former positions of employment, without prejudice to their seniority or other rights and privileges and that it make them whole for any loss of earnings and benefits lost as a result of the discrimination practiced against them, less any net interim earnings, as prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), plus interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended¹⁹

¹⁶ Starting time was 7 a.m.

¹⁷ Kelley did not identify the specific employees who engaged in such behavior.

¹⁸ As indicated, *supra*, I credit Shampine's claim that the trailer phone was out of order on August 28 and his claim that Hartman left the jobsite between 8:30 and 9 a.m.

¹⁹ If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

ORDER

The Respondent, Hartman Mechanical, Inc., Largo, Florida, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Threatening employees with discharge if they wear clothing with a union logo while working.

(b) Threatening to discharge employees who are discovered to be organizing for the Union.

(c) Threatening employees with loss of pay for time spent participating in NLRB elections.

(d) Threatening employees with more onerous working conditions because they support a union.

(e) Docking the pay of employees for time spent participating in an NLRB election.

(f) Discouraging membership in United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local Union #111, or any other labor organization, by discharging employees because they engage in union activities.

(g) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Offer Tom Grey and Mike Mailhot immediate and full reinstatement to their former or substantially equivalent positions of employment and make them whole for the discrimination practiced against them, with interest, as specified in the remedy.

(b) Remove from its files all references to the discharges of Tom Grey and Mike Mailhot, and notify each in writing that this has been done and that the unlawful action will not be used against them in any way.

(c) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(d) Post at its facility in Largo, Florida, copies of the attached notice marked "Appendix."²⁰ Copies of the notice, on forms provided by the Regional Director for Region 12, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately on receipt and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

²⁰ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."